

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RENDA WILLIAMS,	:	CIVIL ACTION
Plaintiff	:	
	:	
vs.	:	
	:	
KENNETH S. APFEL, Commissioner	:	
Social Security Administration,	:	
Defendant	:	NO. 98-3996

O R D E R

AND NOW, to wit, this 3rd day of June, 1999, upon consideration of the parties' Cross-Motions for Summary Judgment and the record in this case, and after review of the Report and Recommendation of United States Magistrate Judge M. Faith Angell dated April 20, 1999, and Plaintiff's Objections to the Report and Recommendation, **IT IS ORDERED** that:

1. The Report and Recommendation of United States Magistrate Judge M. Faith Angell dated April 20, 1999 is **NOT APPROVED** and **ADOPTED**;

2. The Motion for Summary Judgment of defendant, Kenneth S. Apfel, Commissioner of Social Security, is **DENIED**;

3. Plaintiff's Motion for Summary Judgment is **GRANTED**;

4. The decision of the Commissioner of Social Security that denied benefits to plaintiff, Renda Williams, is **REVERSED** and the case is **REMANDED** to the Commissioner of Health and Human

Services pursuant to Sentence 6 of 42 U.S.C. § 405(g) for further proceedings consistent with the attached Memorandum.

BY THE COURT:

JAN E. DUBOIS, J.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RENDA WILLIAMS,	:	CIVIL ACTION
Plaintiff	:	
	:	
vs.	:	
	:	
KENNETH S. APFEL, Commissioner	:	
Social Security Administration,	:	
Defendant	:	NO. 98-3996

DUBOIS, J.

JUNE 3, 1999

MEMORANDUM

A. BACKGROUND

The facts are as set forth in the Report and Recommendation of United States Magistrate Judge M. Faith Angell dated April 20, 1999. They will not be repeated in this Memorandum.

B. LEGAL STANDARD

The role of this Court on judicial review is to determine whether there is substantial evidence to support the decision of the Commissioner of Social Security. Doak v. Heckler, 790 F.2d 26, 28 (3d Cir. 1986); Newhouse v. Heckler, 753 F.2d 283, 285 (3d Cir. 1985). Substantial evidence is defined as the relevant evidence which a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 401 (1971);

Kangas v. Bowen, 823 F.2d 775, 777 (3d Cir. 1987); Cotter v. Harris, 642 F.2d 700, 704 (3d Cir. 1981); Dobrowolsky v. Califano, 606 F.2d 403, 406 (3d Cir. 1979). It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance of the evidence. Ginsburg v. Richardson, 436 F.2d 1146, 1148 (3d Cir. 1971), cert. denied, 402 U.S. 976 (1971); Jones v. Harris, 497 F.Supp. 161, 167 (E.D. Pa. 1980). It is not the role of the Court to review the Commissioner's decision de novo or re-weigh the evidence of record. Monsour Medical Center v. Heckler, 806 F.2d 1185, 1190 (3d Cir. 1986). However, the Court "may at any time order additional evidence to be taken before the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record" during the hearing before the Administrative Law Judge ("ALJ"). Hummel v. Heckler, 736 F.2d 91, 93 (3d Cir. 1984)(quoting 42 U.S.C. § 405(g))(internal quotation marks omitted). Thus, while the Court has no fact-finding role in this case, § 405(g) "contemplates that matters not included in the administrative record may be presented to the Court for the purpose of establishing the need for an order directing the taking of additional evidence." Hummel, 736 F.2d at 93.

To establish a disability under the Social Security Act a claimant must demonstrate that there is some "medically determinable basis for an impairment that prevents him from

engaging in any 'substantial gainful activity' for a statutory twelve-month period." Stunkard v. Secretary of Health and Human Services, 841 F.2d 57, 59 (3d Cir. 1988)(quoting Kangas v. Bowen, 823 F.2d at 777 (3d Cir. 1987)); 42 U.S.C. § 423(d)(1)(1982). A claimant can establish such a disability in either of two ways: (1) by producing medical evidence that one is disabled per se as a result of meeting or equaling certain listed impairments set forth in 20 C.F.R. Regulations No. 4, Subpt. P., Appendix 1 (1998), or (2) by demonstrating an impairment of such severity as to be unable to engage in any kind of substantial gainful work which exists in the national economy. Heckler v. Campbell, 461 U.S. 458, 460 (1983); 42 U.S.C. § 423(d)(2)(A).

It is not enough for the claimant to demonstrate the existence of an impairment. The claimant must establish that the impairment results in functional limitations so severe that they preclude her from engaging in substantial gainful activity. Dupkunis v. Celebrezze, 323 F.2d 380, 381 n.5 (3d Cir. 1963); Gardner v. Richardson, 383 F.Supp. 1, 4 (E.D. Pa. 1974). The burden of proving disability rests upon the claimant. Hess v. Secretary of Health, Education and Welfare, 497 F.2d 837, 840 (3d Cir. 1974).

A claimant is considered to be unable to engage in any substantial gainful activity "only if his physical or mental impairment or impairments are of such severity that he is not only

unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy." 42 U.S.C. § 423(d)(2)(A).

There is an additional issue raised in this case - "whether drug addiction and/or alcoholism is a contributing factor material to any potential disability finding." Under § 105, Public Law 104-121, the Contract With America Advancement Act of 1996, eligibility for Title II and Title XVI disability benefits based on drug addiction and alcoholism is eliminated for individuals whose disability determination requires consideration of the effects of the addictions.

When there is evidence of substance abuse, the adjudication consideration is whether the substance is a contributing factor material to the determination of disability. The relevant inquiry to determine whether substance abuse is a material contributing factor is whether or not the plaintiff would still be found disabled if the plaintiff stopped using drugs or alcohol. The plaintiff, in order to be found disabled, must have an independent disabling condition. 20 C.F.R. § 416.935.

C. THE ADMINISTRATIVE LAW JUDGE'S DECISION

The Decision of the ALJ was issued on June 23, 1997. In the Decision he opined that plaintiff was disabled by reason of substance addiction. It was his conclusion that, absent drug

and/or alcohol addiction, which were contributing factors material to a finding of plaintiff's disability, plaintiff was not disabled under the Act. Accordingly, the ALJ ruled that plaintiff was not eligible for Supplemental Security Income benefits. It is that finding that is challenged by plaintiff in Objections to the Report and Recommendation of Magistrate Judge Angell.

The Secretary's regulations provide a five step sequential evaluation process for determining whether or not a claimant is disabled and entitled to benefits. 20 C.F.R. § 404.1520. Step 1 states that an individual who is working will not be found to be disabled regardless of medical findings. 20 C.F.R. § 404.1520(b). Step 2 involves evaluating severe impairments. 20 C.F.R. § 404.1520(c). Step 3 requires determining whether the claimant has an impairment or combination of impairments which meet or equal a listed impairment in Appendix 1. 20 C.F.R. § 404.1520(d). Step 4 provides that if an individual is capable of performing past relevant work, he will not be found to be disabled. 20 C.F.R. § 404.1520(e). Step 5 requires that if an individual cannot perform past relevant work, other factors must be considered to determine if other work in the national economy can be performed. 20 C.F.R. § 404.1520(f).

The ALJ used the appropriate sequential evaluation process in this case. His findings regarding plaintiff's drug and/or alcohol addiction were made at the third step, and he then

continued the required sequential analysis. However, because of additional evidence presented after the decision of the ALJ was issued, the Court concludes that a remand for further proceedings is required.

The record discloses that, after the decision of the ALJ, counsel for plaintiff became aware of plaintiff's hospitalization at Horsham Clinic from March 6 to April 10, 1997. During that hospitalization, she underwent mental testing - a Global Assessment of Functioning ("GAF"). Plaintiff contends that her scores on that testing when she was sober reflect a mental disorder independent of her substance abuse. Evidence of those facts - a discharge summary from Horsham Clinic - was presented to the Appeals Council on May 12, 1998. Plaintiff's attorney stated in her letter of transmittal to the Appeals Council, dated May 12, 1998, that she had only recently become aware of the evidence.

The ALJ had before him one set of GAF scores - an initial score of 20 (with recent drug and alcohol abuse) and a score of 80 at discharge.¹ Those scores were obtained in tests performed at

¹ According to the Diagnostic and Statistical Manual of Mental Disorders IV ("DSM-IV"), a GAF of 20 is described as follows:

Some danger of hurting self or others (e.g., suicide attempts without clear expectation of death; frequently violent; manic excitement)
OR gross impairment in communication (e.g., largely incoherent or mute).

DSM-IV at 32. In comparison, for a GAF of 80 the DSM-IV

the Horsham Clinic during plaintiff's hospitalization from February 12 to February 25, 1997. Plaintiff was diagnosed as having Bipolar Affective Disorder during that admission.

The GAF scores which were not before the ALJ were more significant. They were the scores obtained in testing during plaintiff's Horsham Clinic admission of March 6 to April 10, 1997. At the time of admission to the Horsham Clinic on March 6, 1997, plaintiff, reportedly substance free, had a GAF score of 40, which is described in the DSM-IV at 32 as follows:

Some impairment in reality testing or communication (e.g., speech is at times illogical, obscure, or irrelevant) **OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood** (e.g., depressed man avoids friends, neglects family, and is unable to work; child frequently beats up younger children, is defiant at home, and is failing at school).

By the time of her discharge on April 10, 1997, the GAF score had climbed only to 60. A GAF of 60 is described as follows in the DSM-IV at 32:

provides:

If symptoms are present, they are transient and expectable reactions to psychosocial stressors (e.g., difficulty concentrating after family argument); **no more than slight impairment in social, occupational, or school functioning** (e.g., temporarily falling behind in schoolwork).

Id. Clearly, the difference between the two scores, 20 and 80, is substantial.

Moderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) **OR moderate difficulty in social, occupational, or school functioning** (e.g., few friends, conflicts with peers or co-workers).

Plaintiff was diagnosed as having a Bipolar Affective Disorder during the March 6, 1997 admission.

Plaintiff does not dispute that the diagnosis made during the admission of March 6, 1997, standing alone, does not establish disability. Instead, plaintiff seeks an evaluation of her residual ability to function. It is plaintiff's position that, given limitations consistent with a GAF of 60 after in-patient psychiatric treatment for more than a month during a period of sobriety and abstinence from illegal drugs, the Commissioner should have remanded the matter to the ALJ. The Court agrees.

As stated above, Section 405(g) permits the Court to order additional evidence to be taken (1) when there is a showing of new evidence that is material and (2) that there is good cause for the failure to incorporate such evidence into the record at a previous proceeding. Hummel, 736 F.2d at 93 (citations omitted). Although the second GAF scores are close in time to the first set of scores, the difference between the two sets of scores in terms of degree of mental impairment is pronounced. Based on this difference, the Court concludes that this new evidence is material to the determination of plaintiff's benefits eligibility. Moreover, the evidence was not produced at the hearing before the

ALJ because it was not known to counsel until after the ALJ issued his Decision, thus meeting the "good cause" requirement for remand under Sentence 6 of section 405(g).

D. CONCLUSION

Based on the foregoing analysis, the Court concludes that the case should be remanded under Sentence 6 of 42 U.S.C. § 405(g) to the ALJ for consideration of the new evidence -- the evidence of the March 6 to April 10, 1997 Horsham Clinic admission. The Court further directs that on remand, the ALJ should consider this new evidence with the assistance of a medical expert and a vocational expert.

BY THE COURT:

JAN E. DUBOIS, J.

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Renda Williams,	:	CIVIL ACTION
Plaintiff	:	
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vs.	:	
	:	
Kenneth S. Apfel, Commissioner	:	
Social Security Administration,	:	
Defendant	:	NO. 98-3996

O R D E R

AND NOW, to wit, this 3rd day of June, 1999, in accordance with the separate Order of June 3, 1999 and with Federal Rule of Civil Procedure 58, Judgment is hereby entered **REVERSING** the decision of the Commissioner of Social Security that denied benefits to the plaintiff, Renda Williams.

BY THE COURT:

JAN E. DUBOIS, J.